

## FIRST NOTICE OF COMMENT PERIOD

LSA Document #16-332

## OUTDOOR HYDRONIC HEATERS REVISIONS

## PURPOSE OF NOTICE

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to [326 IAC 4-3](#) concerning air emissions from outdoor hydronic heaters. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** [326 IAC 4-3](#).

**AUTHORITY:** [IC 13-14-8](#); [IC 13-17-3-1](#); [IC 13-17-3-4](#).

## SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING

**Basic Purpose and Background**

Outdoor hydronic heaters are used to heat and provide hot water for homes and other structures. They are free standing appliances that burn wood or some other fuel to heat water and are available in a wide variety of sizes and efficiencies. A unit typically looks like a small shed with a short smoke stack and is usually located in close proximity to the building to be heated. However, the basic design of outdoor hydronic heaters, as well as improper operation of the heaters, can cause fuel to burn incompletely, or smolder, which can result in thick smoke and high particulate emissions. Problems are aggravated if an outdoor hydronic heater is not sited properly or not used in accordance with manufacturers' recommendations.

Smoke is a primary complaint from residents who live near outdoor hydronic heaters. Temperature inversions cause smoke to stay close to the ground. The smoke drifts across property lines and penetrates adjacent structures. It can also drift across nearby roadways and block visibility for drivers. Pollutants in the emissions from outdoor hydronic heaters include particulate matter, carbon dioxide, and volatile organic compounds including formaldehyde, benzene, polycyclate, aromatic hydrocarbons, and a number of trace elements.

Indiana's current outdoor hydronic heater rule, at [326 IAC 4-3](#), includes operational requirements to prohibit the burning of materials other than wood in the units, stack height requirements, and a use limit in the summer if located close to an occupied building that is not located on the same property as the unit. The rule also requires new units to meet a particulate emission limit of 0.32 pounds per million British thermal units (lbs/mmBtu) in Phase 2 of the requirements. The state rule relies on the United States Environmental Protection Agency's (U.S. EPA) voluntary program to qualify and label new installations. At the time of the state rulemaking in 2011, U.S. EPA did not regulate outdoor hydronic heaters, but recognized the health hazard that was posed by use of the devices. Therefore, due to the increasing popularity of the use of outdoor hydronic heaters in Indiana, coinciding with an increasing number and frequency of formal air quality complaints received by IDEM at that time, the state adopted an outdoor hydronic heater rule.

U.S. EPA published a rule concerning the addition of a new subpart to regulate the Standards of Performance for New Residential Hydronic Heaters and Forced-Air Furnaces (40 CFR 60, Subpart QQQQ) in the Federal Register on March 16, 2015 (80 FR 13672). This action was effective on May 15, 2015, and regulates particulate matter in a two step compliance approach, including test methods and a certification process. Upon the effective date of the federal rule, all new outdoor hydronic heaters were required to meet the New Source Performance Standards (NSPS), and the two step compliance approach allows unit operators to transition from step 1 emission limits on the effective date of the rule, to step 2 emission limits five years later. In step 1, a particulate matter emission limit of 0.32 lb/mmBtu heat output applies to each hydronic heater manufactured on or after May 15, 2015, or sold at retail after December 31, 2015. In step 2, a particulate matter emission limit of 0.10 lb/mmBtu heat output for crib wood applies to each hydronic heater manufactured or sold at retail on or after May 15, 2020. The NSPS at 40 CFR 60, Subpart QQQQ, allows manufacturers lead time to develop, test, field evaluate, and certify current technologies across their consumer product lines in order to both meet step 2 emission limits, and allow retailers to sell existing inventory. The NSPS relevant to outdoor hydronic heaters is included in a concurrent rulemaking and will be incorporated by reference into Indiana's rules at [326 IAC 12](#) with other federal NSPS that are incorporated by reference.

IDEM is proposing to amend [326 IAC 4-3](#) to remove the requirement for new installations to meet Phase 2 particulate emission limits for outdoor hydronic heaters and label according to U.S. EPA's previous voluntary program, as new installations are now regulated nationwide under the federal rule. The primary purpose of this rulemaking is to update [326 IAC 4-3](#) so there are no conflicts with the federal NSPS. This rule will also amend additional language as necessary to address the changes in implementation. These amendments do not make any substantive changes or impose any new regulations beyond those already federally required or currently

enforced in [326 IAC 4-3](#). While the NSPS applies to more than outdoor hydronic heaters, such as forced air furnaces, the state rule at [326 IAC 4-3](#) will remain limited to outdoor hydronic heaters. Additionally, there are certain requirements in [326 IAC 4-3](#) that were implemented by IDEM in the 2011 rulemaking that are not part of the U.S. EPA final rule. These requirements concern operational uses of the unit, such as stack height requirements, the summertime operating ban, opacity limits, and the notice to buyers. This rulemaking proposes to retain these requirements.

IDEM seeks comment on the affected citations listed, including suggestions for specific language, any other provisions of Title 326 that may be affected by this rulemaking, and alternative ways to achieve the purpose of the rulemaking.

#### **Alternatives to Be Considered Within the Rulemaking**

Alternative 1. Modify the language in [326 IAC 4-3](#) to remove the requirement for new installations to meet Phase 2 particulate emission limits for outdoor hydronic heaters and label outdoor hydronic heaters according to U.S. EPA's previous voluntary program, as new installations are now regulated nationwide with U.S. EPA's NSPS, and amend additional language as necessary to address the change in implementation.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No. The NSPS at 40 CFR 60, Subpart QQQQ, will be incorporated by reference at [326 IAC 12](#) through a separate rulemaking.
- Is this alternative imposed by federal law or is there a comparable federal law? This alternative is not imposed by federal law, but is related to portions of 40 CFR 60, Subpart QQQQ.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 2. Do not amend this state rule.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? No.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. The alternative to not amend the state rule as required by U.S. EPA may have consequences associated with it, since it is a federal mandate.

#### **Applicable Federal Law**

This rulemaking addresses the U.S. EPA final rule published in the Federal Register on March 16, 2015 (80 FR 13672) that applies to standards of performance for new residential outdoor hydronic heaters in [326 IAC 4-3](#) and its implications on the state rule regulating outdoor hydronic heaters.

#### **Potential Fiscal Impact**

Potential Fiscal Impact of Alternative 1. This alternative should have minimal fiscal impact. New installations will be required to follow the NSPS and the revised state rule. New installations in Indiana were already required to meet Phase 2 emission limits that are equivalent to the new 2015 NSPS limits. Any costs associated with the more stringent standards in 2020 under the NSPS are costs required by the federal rule and not under state law.

Potential Fiscal Impact of Alternative 2. If [326 IAC 4-3](#) is not amended, then a manufacturer would not be able to comply with the requirement to sell or distribute a unit that has been qualified with U.S. EPA's voluntary hydronic heater program. U.S. EPA has replaced the voluntary program with the NSPS in 40 CFR 60, Subpart QQQQ. While the voluntary program and the 2015 NSPS emission limits may be similar, the details in the labeling requirements are inconsistent, and in 2020 the emission limits in the NSPS will become more stringent.

#### **Small Business Assistance Information**

IDEM established a compliance and technical assistance program (CTAP) under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP program and other resources available can be found at:

[www.in.gov/idem/ctap](http://www.in.gov/idem/ctap)

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Angela Taylor  
IDEM Small Business Regulatory Coordinator/CTAP Small Business Liaison  
IGCN 1316  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 233-0572 or (800) 988-7901  
[ctap@idem.in.gov](mailto:ctap@idem.in.gov)

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 4-4-35-8](#) is:

Robert Warner  
Office of Small Business and Entrepreneurship  
One North Capitol, Suite 600

Indianapolis, IN 46204  
(317) 232-5679  
ombudsman@osbe.in.gov

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 4-4-35-8](#), specifically [IC 4-4-35-8\(9\)](#), investigating and attempting to resolve any matter regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsmen are:

Steven N. Howell and Brian Rockensuess  
IDEM Small Business Assistance Program Ombudsmen/Office of Government and Community Affairs  
IGCN 1301  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 232-8587, (317) 234-3386, or (800) 451-6027  
snhowell@idem.in.gov or brockens@idem.in.gov

#### **Public Participation and Work Group Information**

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Keelyn Walsh, Rules Development Branch, Office of Legal Counsel at (317) 232-8229 or (800) 451-6027 (in Indiana).

#### **REQUEST FOR PUBLIC COMMENTS**

At this time, IDEM solicits the following:

- (1) The submission of alternative ways to achieve the purpose of the rule.
- (2) The submission of suggestions for the development of draft rule language.

Comments may be submitted in one of the following ways:

- (1) By mail or common carrier to the following address:

LSA Document #16-332 Outdoor Hydronic Heaters  
Keelyn Walsh  
Rules Development Branch  
Office of Legal Counsel  
Indiana Department of Environmental Management  
Indiana Government Center North  
100 North Senate Avenue  
Indianapolis, IN 46204-2251

- (2) By facsimile to (317) 233-5970. Please confirm the timely receipt of faxed comments by calling the Rules Development Branch at (317) 232-8922.

- (3) By electronic mail to [kwalsh@idem.in.gov](mailto:kwalsh@idem.in.gov). To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

- (4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

#### **COMMENT PERIOD DEADLINE**

All comments must be postmarked, faxed, or time stamped not later than September 16, 2016.

Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Keelyn Walsh, Rules Development Branch, Office of Legal Counsel (317) 232-8229 or (800) 451-6027 (in Indiana).

Nancy King, Chief  
Rules Development Branch  
Office of Legal Counsel

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An [html](#) version of this document.